

RECEIVED
CENTRAL FAX CENTER

SEP 23 2005

**FACSIMILE COVER PAGE
(THIS COVER PAGE + 5 PAGES)**

Today's Date: September 23, 2005

To: Office of Petitions

FAX: (571) 273-8300/ -0025

**From: Frederick E. Cooperrider #36,769
McGinn&Gibb, PLLC
Ph: (703) 761-2377**

In re Application of Goldszmidt, et al

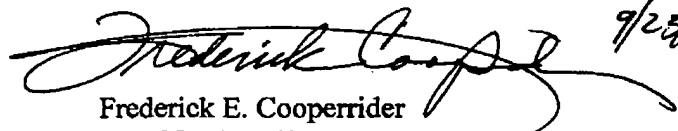
Serial No.: 09/559,065

**For: METHOD AND APPARATUS FOR DYNAMICALLY ADJUSTING RESOURCES
ASSIGNED TO PLURALITY OF CUSTOMERS, FOR MEETING SERVICE LEVEL
AGREEMENTS (SLAs) WITH MINIMAL RESOURCES, AND ALLOWING
COMMON POOLS OF RESOURCES TO BE USED ACROSS PLURAL
CUSTOMERS ON A DEMAND BASIS**

**Contents: Petition Under 37 CFR §1.181 for Review of Drawing Objection on Notice of
Allowance (5 pages)**

CERTIFICATION OF TRANSMISSION

I certify that I transmitted via facsimile both to (571) 273-8300 and to (571) 273-0025
this Petition Under 37 CFR §1.181 to the Office of Petitions on September 23, 2005.

 9/23/05
Frederick E. Cooperrider
Reg. No. 36,769

RECEIVED
CENTRAL FAX CENTER

SEP 23 2005

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of

Goldszmidt, et al

Serial No.: 09/559,065

Group Art Unit: 2154

Filed: April 28, 2000

Examiner: Lin, W. T.

For: METHOD AND APPARATUS FOR DYNAMICALLY ADJUSTING RESOURCES
ASSIGNED TO PLURALITY OF CUSTOMERS, FOR MEETING SERVICE LEVEL
AGREEMENTS (SLAs) WITH MINIMAL RESOURCES, AND ALLOWING COMMON
POOLS OF RESOURCES TO BE USED ACROSS PLURAL CUSTOMERS ON A DEMAND
BASIS

Honorable Commissioner of Patents
Alexandria, VA 22313-1450

**PETITION UNDER 37 C.F.R. §1.181 FOR REVIEW OF
DRAWING OBJECTION ON NOTICE OF ALLOWANCE**

Sir:

Applicants petition under 37 C.F.R. §1.181 that the Drawing Objection in item 6 of the Notice of Allowability included in the Notice of Allowance and Fee(s) Due dated August 29, 2005, be withdrawn.

It is noted that, absent an express contrary indication by the person authorized under the Patent Rules to respond, this Petition is intended as a complete response to the requirement in the Notice of Allowability that Applicants have "... *THREE MONTHS FROM THE "MAILING DATE"* of this communication to file a reply complying with the requirements noted below."

Statement of Facts:

In the Notice of Allowability the Examiner makes reference to the Notice of Draftsperson's Patent Drawing Review (PTO-948) in the Paper No./Mail Date 6/27/03.

This reference appears to be the Office Action mailed on July 10, 2003, having the PTO-948 dated 6/12/03, wherein the Draftsperson's comments state: "*Table 1-5 must be labeled*

Petition Under 37 CFR §1.181

S/N: 09/559,065

Attorney Docket: YOR919990479US1 (YOR.146)

Page 2

w/Fig. legends as Fig. drawings.” This comment is understood as derived from item 6 on the PTO-948 form, which is labeled “*VIEWS. 37 CFR 1.84(h) REMINDER: Specification may require revision to correspond to drawing changes. Partial views. 37 CFR 1.84(h)(2)*” and the Draftsperson has marked the entry “*Views not labeled separately or properly. Fig(s)*” and added “*Table 1-5*”.

In the Office Action dated July 10, 2003, the Examiner added the following instruction: “... *Applicant is reminded that the changes need also be reflected in the “Brief Description of the Drawings” section and correct all the renamed tables throughout the specification accordingly.*”

In the Amendment Under 37 CFR §1.111 filed on October 10, 2003, Applicants submitted that these Tables 1-5 fully comply with 37 CFR §1.58 “*Chemical and Mathematical Formulae and Tables*”, that this format of using tables is common practice, and that the public cannot reasonably be expected to restructure patent specifications based on arbitrary preferences of each Examiner and Draftsperson.

In the Final Rejection of the Office Action dated November 25, 2003, the Examiner stated: “*Applicant is reminded that Tables 1-5 are counted as drawing sheets because they were submitted together with the figure drawings, with table pages labeled consecutive to the drawing pages. To have these table pages considered as they were intended, it is required that these table pages become part of the specification. For example, Applicant may de-associate the table pages from the figure pages and put them in an appendix.*”

In the Amendment Under 37 CFR §1.116 filed on January 27, 2004, Applicants submitted that the Tables are already de-associated from the Figures by reason of the separately appropriate legends and that the consecutive numbering of these pages is to help ensure that the pages are not inadvertently separated by the USPTO.

In the first Notice of Allowance dated February 3, 2004, the Examiner marked item 6 on the Notice of Allowability, adding reference to “*Paper No./Mail Date 5*”.

In an attempt to respond in accordance with the statements then of record, Applicants submitted on February 12, 2004, a set of replacement Figures and Tables that did not include a

Petition Under 37 CFR §1.181

S/N: 09/559,065

Attorney Docket: YOR919990479US1 (YOR.146)

Page 3

consecutive numbering of pages.

In the non-final rejection in the Office Action dated May 7, 2004, in which the Examiner re-opened prosecution, there was no mention of a continuing concern with this matter.

In the first final rejection in the Office Action dated November 2, 2004, there again was no mention of this matter.

In the second final rejection in the Office Action dated April 21, 2005, there again was no mention of this matter.

In the Advisory Action dated July 20, 2005, there again was no mention of this matter.

However, in the second Notice of Allowability of the second Notice of Allowance dated August 29, 2005, the Examiner again imposed a requirement that the Draftsperson's objection be addressed, presumably to now be done by an extensive Amendment Under 37 CFR §1.312.

Applicants' Position and Arguments:

Applicants respectfully repeat their request that the USPTO refrain from the practice of permitting each Examiner and Draftsperson from imposing arbitrary preferences on the contents and structure of an Application and require that Applicants make changes that are not required either by patent rules or by the procedures outlined in the MPEP.

That is, it is noted that 37 CFR §1.84(h) addresses "Views", which are defined in that section as follows: "*The drawing must contain as many views as necessary to show the invention. The views may be plan, elevation, section, or perspective views.*" It is noted that there is no suggestion in this section that Examiners and/or Draftspersons are authorized to declare that "tables" not embedded in the text of the specification are to be considered as "views" to be converted from "tables" into "figures".

It is further noted that 37 CFR §1.84(h)(2) addresses "Partial Views" and that this section likewise contains no suggestion that Examiners and/or Draftspersons are authorized to declare that "tables" not embedded in the text of the specification are to be considered as "views" to be converted from "tables" into "figures".

It is further noted that 37 CFR §1.58, which specifically address "Tables" states: "*The description portion of the specification may contain tables*" (emphasis by Applicants) and that

Petition Under 37 CFR §1.181

S/N: 09/559,065

Attorney Docket: YOR919990479US1 (YOR.146)

Page 4

there is no suggestion that tables are precluded from being submitted separate from the text portion of the specification.

It is further noted that 37 CFR §1.51 contains no special appendix into which tables not embedded in text be submitted and that 37 CFR §1.52(e) (1)(iii) specifically allows a table having more than 50 pages of text to be submitted via a compact disc.

Finally, it is noted that 37 CFR §1.52 (a)(4) seems to clearly confirm the common practice that tables not embedded in the specification text are indeed to be considered something different from drawings: "*See §1.58 for chemical and mathematical formulae and tables, and §1.84 for drawings.*"

Applicants' Request:

Therefore, Appellant respectfully requests that the objection under 37 CFR §1.84(h) be withdrawn, since:

- Applicants have already submitted a revised set of Figures and Tables that lack the consecutive numbering, thereby dis-associating the Figures from the Tables, as requested by the Examiner;
- The Examiner and Draftsperson provide no justification on the record as to why the normal practice of submitting tables not embedded in the text on separate pieces of paper, fully in accordance with the description of 37 CFR §1.52 (1), is suddenly and inexplicably considered by the USPTO as now being improper;
- The Examiner provides no response on the record to Applicants responses throughout prosecution, as indicated above, that the practice of submitting non-embedded tables on separate paper is normal practice;
- The Examiner has waited until sending out the second Notice of Allowance to impose this requirement a second time, without providing any reasonable response to Applicants' explanation during prosecution; and
- The Amendment necessary to achieve this conversion from tables to figures will require an extensive Amendment Under 37 CFR §1.312 that will require involvement by both the Examiner and the Draftsperson and will unduly delay and disrupt the normal after-allowance

Petition Under 37 CFR §1.181

S/N: 09/559,065

Attorney Docket: YOR919990479US1 (YOR.146)

Page 5

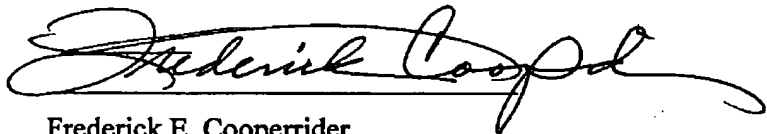
processing of this Application.

Conclusion:

It is requested that Applicants be advised as soon as possible of the decision of this petition, since Applicants consider any further action to make corrections to the Application will cause considerable disruption to both the USPTO and to Applicants. Applicants submit that they must know as soon as possible, in order to attempt to timely re-do the Application by an Amendment Under 37 CFR §1.312, in order to accommodate the Examiner's untimely and unorthodox requirement and procedure of imposing such requirement in the Notice of Allowance and get this Amendment to the Examiner in a timely manner that does not totally disrupt the normal post-allowance process.

Respectfully submitted,

Date: 9/23/05



Frederick E. Cooperrider
Reg. No. 36, 769
(703) 761-2377

McGinn Intellectual Property Law Group, PLLC

8321 Old Courthouse Rd., Suite 200

Vienna, VA 22182-3817

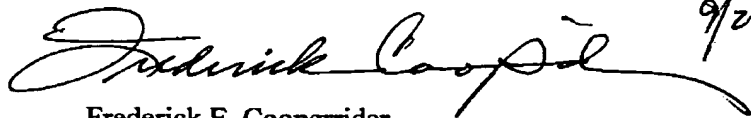
(703) 761-4100

Fax: (703) 761-2375

Customer No. 21254

CERTIFICATION OF TRANSMISSION

I certify that I transmitted via facsimile both to (571) 273-8300 and to (571) 273-0025 this Petition Under 37 CFR §1.181 to the Office of Petitions on September 23, 2005.



Frederick E. Cooperrider
Reg. No. 36,769